

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
St. George Cable, Inc.)	File No.: EB-10-TP-0065
)	
St. George Island, Florida)	NAL/Acct. No.: 201132700009
)	
)	FRN: 0021185574

NOTICE OF APPARENT LIABILITY FOR FORFEITURE AND ORDER

Adopted: September 30, 2011

Released: September 30, 2011

By the District Director, Tampa Office, South Central Region, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture and Order (“NAL”), we find that St. George Cable, Inc. (“St. George”), operator of the cable television system in St. George Island, Florida, apparently willfully and repeatedly violated sections 11.35(a), 76.605(a)(12), 76.611(a) and 76.1801 of the Commission’s rules (“Rules”),¹ by (1) failing to install Emergency Alert System (“EAS”) equipment; (2) operating its cable system with excessive signal leakage; and (3) failing to register its cable system with the Commission. We conclude that St. George is apparently liable for a forfeiture in the amount of twenty-five thousand dollars (\$25,000). We further order St. George to submit a sworn statement certifying that it is currently in compliance with sections 11.35 and 76.1801 of the Rules.²

II. BACKGROUND

2. On July 27, 2010, in response to a complaint, agents from the Tampa Office of the Enforcement Bureau (“Tampa Office”) reviewed Commission records and determined that St. George had failed to file a registration statement with the Commission on FCC Form 322 for the system. On January 11 and 13, 2011, agents from the Tampa Office conducted an inspection of the St. George Island cable system and observed twenty leaks. Fourteen leaks on the frequency 121.2625 MHz measured over 100 microvolts per meter (“μV/m”) at a distance of at least 3 meters; the highest measuring 1,023 μV/m. The Cumulative Leakage Index (“CLI”) for all twenty of the measured leaks was calculated at 64.88. The agents reviewed the results of the system inspection with St. George’s owner on January 14, 2011. The owner admitted that St. George did not maintain any cable signal leakage logs and did not perform routine maintenance of the cable system. He stated that St. George only conducts maintenance and repairs after receipt of a complaint.

3. On January 14, 2011, agents from the Tampa Office also requested to inspect St. George’s EAS equipment and logs. St. George’s owner admitted that the company had never installed any EAS equipment for the St. George Island system.³ He also admitted that St. George still had not registered the

¹ See 47 C.F.R. §§ 11.35(a) (EAS equipment requirements), 76.605(a)(12) (cable television technical standards), 76.611(a)(1) (cable television basic signal leakage performance criteria), 76.1801 (cable registration statement).

² See 47 C.F.R. §§ 11.35 and 76.1801.

³ The agents found no record of any waivers of EAS requirements being granted to St. George.

system with the Commission on a FCC Form 322 and, therefore, was never assigned a community unit number or physical system number.

4. On January 20, 2011, the Tampa Office issued an order directing St. George to cease operations on aeronautical band frequencies.⁴ On February 28, 2011, St. George informed the Tampa Office that it had repaired all of the leaks found in the January inspection and brought the system's CLI into compliance.⁵

III. DISCUSSION

5. Section 503(b) of the Communications Act of 1934, as amended ("Act"),⁶ provides that any person who willfully or repeatedly fails to comply substantially with the terms and conditions of any license, or willfully or repeatedly fails to comply with any of the provisions of the Act or of any rule, regulation or order issued by the Commission thereunder, shall be liable for a forfeiture penalty. Section 312(f)(1) of the Act defines willful as the "conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate" the law.⁷ The legislative history to section 312(f)(1) of the Act clarifies that this definition of willful applies to both sections 312 and 503(b) of the Act,⁸ and the Commission has so interpreted the term in the section 503(b) context.⁹ The Commission may also assess a forfeiture for violations that are merely repeated, and not willful.¹⁰ The term "repeated" means the commission or omission of such act more than once or for more than one day.¹¹

6. **EAS Equipment.** Every analog and digital cable system is part of the nationwide EAS network and is categorized as a participating national EAS source, unless the cable system affirmatively requests authority to refrain from participation and the Commission approves the request.¹² The EAS

⁴ See Letter from Ralph Barlow, District Director, Tampa Office, to Charles Sumner, Owner of St. George Cable, Inc., dated January 20, 2011. This letter was in addition to a verbal warning issued on January 14, 2011 that St. George Island system was likely in violation of CLI requirements. On January 14, 2011, agents from the Tampa Office had not completed their final calculations to determine whether the system exceeded CLI.

⁵ See Letter from Charles Sumner, Owner of St. George Cable, Inc., to Ralph Barlow, District Director, Tampa Office dated February 2, 2011. St. George faxed the completed report to the Tampa Office on February 28, 2011.

⁶ See 47 U.S.C. § 503(b).

⁷ See 47 U.S.C. § 312(f)(1).

⁸ See H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982) ("This provision [inserted in section 312] defines the terms 'willful' and 'repeated' for purposes of section 312, and for any other relevant section of the act (e.g., section 503) As defined[,] . . . 'willful' means that the licensee knew that he was doing the act in question, regardless of whether there was an intent to violate the law. 'Repeated' means more than once, or where the act is continuous, for more than one day. Whether an act is considered to be 'continuous' would depend upon the circumstances in each case. The definitions are intended primarily to clarify the language in sections 312 and 503, and are consistent with the Commission's application of those terms").

⁹ See, e.g., *Application for Review of Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991) ("Southern California Broadcasting Co.").

¹⁰ See, e.g., *Callais Cablevision, Inc.*, Notice of Apparent Liability for Monetary Forfeiture, 16 FCC Rcd 1359, 1362 ¶ 10 (2001) ("*Callais Cablevision, Inc.*") (proposing a forfeiture for, *inter alia*, a cable television operator's repeated signal leakage).

¹¹ Section 312(f)(2) of the Act, 47 U.S.C. § 312(f)(2), which also applies to violations for which forfeitures are assessed under section 503(b) of the Act, provides that "[t]he term 'repeated', when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day."

¹² See 47 C.F.R. §§ 11.11, 11.41.

enables the President and state and local governments to provide immediate and emergency communications and information to the general public.¹³ State and local area plans identify local primary sources responsible for coordinating carriage of common emergency messages from sources such as the National Weather Service or local emergency management officials.¹⁴ Required monthly and weekly tests originate from EAS Local or State Primary sources and must be retransmitted by the participating station. As the nation's emergency warning system, the EAS is critical to public safety, and we recognize the vital role that regulatees play in ensuring its success. The Commission takes seriously any violations of the Rules implementing the EAS and expects full compliance from its regulatees.

7. Section 11.35 of the Rules requires all EAS participants to ensure that EAS encoders, EAS decoders, and Attention Signal generating and receiving equipment are installed so that the monitoring and transmitting functions are available during the times the systems are in operation.¹⁵ On January 14, 2011, agents from the Tampa Office observed that St. George did not have any EAS equipment installed for the St. George Island system when the system was in operation. Further, St. George's owner admitted that EAS equipment had never been installed for the system and that the company acquired a franchise for the system in 1998.¹⁶ Thus, based on the evidence before us, we find that St. George apparently willfully and repeatedly violated section 11.35 of the Rules by failing to install EAS equipment for the St. George Island cable system.

8. **Cable Signal Leakage Standards.** The Commission has established cable signal leakage rules to control emissions that could cause cable systems to interfere with aviation frequencies. Protecting the aeronautical frequencies from harmful interference is of paramount importance.¹⁷ To this end, the Commission has established basic signal leakage standards.¹⁸ The Commission has determined the tolerable levels of unwanted signals on the aeronautical frequencies in two ways, with signal leakage levels that exceed these thresholds considered harmful interference. First, leakage at any given point must not exceed 20 $\mu\text{V/m}$.¹⁹ Second, the Commission requires that each system annually measure and report its CLI ($10 \log I_{\infty}$)²⁰ to demonstrate safe levels of signal leakage (*i.e.*, a CLI of less than 64).²¹

¹³ See 47 C.F.R. §§ 11.1, 11.21.

¹⁴ See 47 C.F.R. § 11.18. State EAS plans contain guidelines that must be followed by broadcast and cable personnel, emergency officials and National Weather Service personnel to activate the EAS for state and local emergency alerts. The state plans include the EAS header codes and messages to be transmitted by the primary state, local and relay EAS sources.

¹⁵ See 47 C.F.R. § 11.35.

¹⁶ See *Non-Exclusive Franchise Agreement* between St. George Cable, Inc. and Board of County Commissioners, Franklin County, Florida, dated September 1, 1998.

¹⁷ The "aeronautical bands" are 108-137 MHz and 225-400 MHz. These frequencies encompass both radionavigation frequencies, 108-118 MHz and 328.6-335.4 MHz, and communications frequencies, 118-137 MHz, 225-328.6 MHz and 335.4-400 MHz. The international distress and calling frequencies, 121.5 MHz, 156.8 MHz, and 243 MHz, receive heightened protection. See 47 C.F.R. § 76.616. These frequencies are critical for Search and Rescue Operations, including use by Emergency Locator Transmitters on planes and Emergency Position Indicating Radio Beacons on boats. See generally 47 C.F.R. Part 80, Subpart V; 47 C.F.R. §§ 87.193-87.199. Harmful interference includes any interference that "endangers the functioning of a radionavigation service or of other safety services." See 47 C.F.R. §§ 2.1, 76.613(a).

¹⁸ See *Amendment of Part 76 of the Commission's Rules to Add Frequency Channelling Requirements and Restrictions and to Require Monitoring for Signal Leakage from Cable Television Systems*, Memorandum Opinion and Order, Docket No. 21006, 101 FCC 2d 117, ¶ 14 (1985).

¹⁹ See 47 C.F.R. § 76.605(a)(12).

²⁰ See 47 C.F.R. § 76.615(b)(7).

²¹ See 47 C.F.R. § 76.611(a).

The rules also require cable operators to provide for a program of routine monitoring of the system to detect leaks.²² The cable system operator must eliminate any harmful interference it causes.²³ Cable system operators also must maintain a log for two years showing the date and location of each leakage source and the date on which the leakage was repaired.²⁴

9. As discussed above, section 76.605(a)(12) of the Rules states that signal leakage from a cable television system shall be limited to 20 $\mu\text{V}/\text{m}$ at 3 meters,²⁵ and section 76.611(a) of the Rules states that no cable television system shall provide service in the aeronautical radio bands unless the system's CLI is less than 64.²⁶ On January 11 and 13, 2011, however, agents from the Tampa Office observed fourteen leaks on aeronautical frequencies that exceeded 100 $\mu\text{V}/\text{m}$ at 3 meters in the St. George Island system. Additionally, the CLI for the St. George Island system on January 11 and 13, 2011 was calculated at 64.88, which exceeds the limit under the rule. Moreover, St. George admitted that it did not conduct routine monitoring of its system to detect leaks or maintain any signal leakage logs. Thus, based on the evidence before us, we find that St. George apparently willfully and repeatedly violated sections 76.605(a)(12) and 76.611(a) by operating the St. George cable system with excessive signal leakage.

10. **Cable Community Registration Statement.** Section 76.1801 of the Rules requires cable operators to submit a registration statement with the Commission on FCC Form 322.²⁷ "A system community unit shall be authorized to commence operation only after filing with the Commission the following information on FCC Form 322."²⁸ On July 27, 2010, St. George was instructed to file a Form 322 with the Commission for the St. George Island system, but it did not. In fact, on January 14, 2011, St. George admitted that it had not yet filed a Form 322. As of September 28, 2011 -- more than a year after St. George was directed to file the required Form -- the Commission still has no record of a Form 322 on file for the St. George Island system and, as such, St. George still has not been assigned a community unit number or physical system number. Thus, based on the evidence before us, we find that St. George apparently willfully and repeatedly violated section 76.1801 of the Rules by failing to submit a registration statement with the Commission on FCC Form 322.

11. **Proposed Action.** Pursuant to the Commission's *Forfeiture Policy Statement* and section 1.80 of the Rules, the base forfeiture amount for EAS equipment not installed or operational is \$8,000; for violation of the rules relating to distress and safety frequencies is \$8,000; and for failing to file required forms is \$3,000.²⁹ Cable signal leakage in the aeronautical bands constitutes harmful interference to distress and safety frequencies.³⁰ In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in section 503(b)(2)(E) of the Act, which include the nature, circumstances, extent, and gravity of the violations, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.³¹ Because St. George has not

²² See 47 C.F.R. § 76.614.

²³ See 47 C.F.R. § 76.613(b).

²⁴ See 47 C.F.R. § 76.1706.

²⁵ See 47 C.F.R. § 76.605(a)(12).

²⁶ See 47 C.F.R. § 76.611(a).

²⁷ See 47 C.F.R. § 76.1801.

²⁸ *Id.*

²⁹ See *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087 (1997) ("*Forfeiture Policy Statement*"), *recon. denied*, 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80.

³⁰ See 47 C.F.R. §§ 2.1, 76.613(a).

³¹ 47 U.S.C. § 503(b)(2)(E).

submitted the Form 322 more than a year after being instructed to do so, we conclude an upward adjustment in the amount of \$1,500 is warranted. Because St. George never installed EAS equipment for its St. George Island system after it was required to do so in 2002,³² we conclude an upward adjustment in the amount of \$4,500 is warranted. Applying the *Forfeiture Policy Statement*, section 1.80 of the Rules, and the statutory factors to the instant case, we conclude that St. George is apparently liable for a \$25,000 forfeiture consisting of the following elements: \$12,500 for failure to install EAS equipment; \$8,000 for excessive cable signal leakage; and \$4,500 for failure to file required forms.

12. We direct St. George to submit a statement signed under penalty of perjury by an officer or director of St. George stating that: (1) it has installed operational EAS equipment for the St. George Island system in compliance with section 11.35 of the Rules; and (2) it has submitted a Form 322 for the St. George Island system in compliance with section 76.1801 of the Rules. This statement must be provided to the Tampa Office at the address listed in paragraph 17 within thirty days after the release date of this *NAL*.

IV. ORDERING CLAUSES

13. Accordingly, **IT IS ORDERED** that, pursuant to section 503(b) of the Communications Act of 1934, as amended, and sections 0.111, 0.204, 0.311, 0.314 and 1.80 of the Commission's Rules, St. George Cable, Inc. is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of twenty-five thousand dollars (\$25,000) for violation of sections 11.35(a), 76.605(a)(12), 76.611(a), and 76.1801 of the Commission's Rules.³³

14. **IT IS FURTHER ORDERED** that, pursuant to section 1.80 of the Commission's Rules, within thirty days of the release date of this Notice of Apparent Liability for Forfeiture and Order, St. George Cable, Inc. **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

15. **IT IS FURTHER ORDERED** that St. George Cable, Inc. **SHALL SUBMIT** a sworn statement as described in paragraph 12 to the Tampa Office within thirty days after the release date of this Notice of Apparent Liability for Forfeiture and Order. The statements should also be emailed to SCR-Response@fcc.gov.

16. Payment of the forfeiture must be made by credit card, check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the Account Number and FRN Number referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters "FORF" in block number 24A (payment type code). Requests for full payment under an installment plan should be sent to: Chief Financial Officer -- Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.³⁴ If you have questions regarding payment procedures, please contact the Financial Operations

³² See 47 C.F.R. § 11.11 (requiring analog cable systems serving fewer than 5,000 subscribers from a headend to comply with EAS requirements as of October 1, 2002).

³³ 47 U.S.C. § 503(b), 47 C.F.R. §§ 0.111, 0.204, 0.311, 0.314, 1.80, 11.35(a), 76.605(a)(12), 76.611(a), 76.1801.

³⁴ See 47 C.F.R. § 1.1914.

Group Help Desk at 1-877-480-3201 or Email: ARINQUIRIES@fcc.gov. St. George shall send electronic notification on the date said payment is made to SCR-Response@fcc.gov.

17. The written statement seeking reduction or cancellation of the proposed forfeiture, if any, must include a detailed factual statement supported by appropriate documentation and affidavits pursuant to sections 1.80(f)(3) and 1.16 of the Rules. Mail the written statement to Federal Communications Commission, Enforcement Bureau, South Central Region, Tampa Office, 4010 W. Boy Scout Blvd., Suite 425, Tampa, Florida 33607, and must include the NAL/Acct. No. referenced in the caption. The statements should also be emailed to SCR-Response@fcc.gov.

18. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

19. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture and Order shall be sent by both Certified Mail, Return Receipt Requested, and regular mail, to St. George Cable, Inc. at P.O Box 1090, St. George Island, Florida 32328.

FEDERAL COMMUNICATIONS COMMISSION

Ralph Barlow
District Director,
Tampa Office
Southeast Region
Enforcement Bureau